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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,401	02/03/2006	Bernhard Gallnbock	GALLNBOCK-1 (PCT)	2561
25889 7590 08/06/2009				
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576				
EXAMINER				
BAINBRIDGE, ANDREW PHILIP				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
08/06/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/567,401

**Applicant(s)**

GALLNBOCK, BERNHARD

**Examiner**

ANDREW P. BAINBRIDGE

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4 and 5 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 2, 4 and 5 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 03 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Objections***

1. Claim 1 is objected to because of the following informalities: the phrase beginning with the word "especially" (claim 1, line 2) is inappropriate for claim language as it is ambiguous. Appropriate correction is required.
2. Claim 1 is objected to because of the following informalities: the phrase "by which" (claim 1, lines 3-4) should read "having". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. The phrase "can be pressurized" (claim 1, line 4) is indefinite within the context of the claim as it is unclear if what follows is positive recitation of an elements, as such was given limited weight.
6. The phrase "wherein the gas pressure source is replacelably connected" (claim 1, page 2, line 2-3) is indefininte since within the context fo the claim, it is unclear if what follows are positive recitations, and as such was given limited weight.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claims 1-2 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US 6,406,458 (Tilander) in view of US 5,571,261 (Sancoff et al.).

10. Tilander in figures 1-8 discloses an apparatus for a dosed infusion bag 21 with a pressure chamber 27 formed by a casing 11 that is sealed against a membrane 27A located that is in pressurized communication with a fluid chamber 13 that contains the infusion bag 21 with a gas pressure source 19 has a pressure regulator 26 and a plug-in coupling 19. Tilander lacks teaching a replaceable gas pressure source that comprises a carbonate formulation pressed into a tablet and an organic acid. Sancoff in figures 1-32 teaches a carbonate tablet 119 that is introduced to a citric or organic acid 121 inside a replaceable packet 120 to create excess gas to pressurize the chamber 106. It would be obvious to one of ordinary skill in the art to adapt Sancoff to Tilander because

Sancoff provides a way to create the pressurized chamber using something other than a big mechanical object or an awkward foot press, and it is even more helpful that the gas creating packet is replaceable.

11. **Claims 4-5 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Tilander in view of Sancoff as applied in claims 1 and 2 respectively, and further in view of US 6,510,965 (Decottignies et al.).

12. Tilander in view of Sancoff as applied in claims 1 and 2 respectively have all of the elements of claims 4-5 except for the first and second housing parts are joined together to each other at one side in an articulated manner with a latching device at the opposite side. Decottignies in figures 1-6 teaches a paired clamshell casing 1, 11 for a bag 3 that has a clamshell hinge 10 and retaining clips on the opposite sides 112. It would be obvious to one of ordinary skill in the art to adapt Decottignies to the Tilander-Sancoff combination because Decottignies teaches a way to hold the whole apparatus together while making replacing the infusion bag and the gas pressure tablets that much more convenient.

#### ***Response to Arguments***

13. Applicant's arguments filed April 9, 2009 have been fully considered but they are not persuasive. The Applicant argues that Tilander and the other references lack portability, but the Tilander reference specifically contemplates portability as does Sancoff. Further, an assertion of portability without requisite structural limitations leaves this Examiner with no choice but to examine the claims as they are written, not in light of the Applicant's specification or intended use.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ANDREW P. BAINBRIDGE** whose telephone number is (571)270-3767. The examiner can normally be reached on **Monday to Thursday, 9:30 AM to 8:30 PM EST**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./  
Examiner, Art Unit 3754

/Kenneth Bomberg/  
Primary Examiner, Art Unit 3754